IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/08/2003

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL No.288 of 1995

1. Rabi
2. Ravi
3. Charles .. Appellants

-Vs-

State rep. by Inspector
of Police, Karungal
Police Station. .. Respondent

This criminal appeal is preferred under Sec.374 of The Code of Criminal Procedure against the judgment of the Sessions Judge, Kanyakumari District, Nagerkoil, made in S.C.No.68 of 1994 and dated 17.2.1995.

!For Appellants : Mr.V.Gopinath,
Senior Counsel,
for M/s.K.Selvarangan
N.S.Nappinai

^For Respondent : Mr.S.Jayakumar,
Additional Public Prosecutor

:JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)
This appeal has been brought forth by A-1 to A-3 who stood charged, tried, found guilty and sentenced to imprisonment by the learned Sessions Judge, Nagercoil, as detailed below.

Accused	Charge	Guilty(IPC)	Punishment(IPC)
A-1	341, 324, 324 - 2 years R.I. 307 & 302	341 - Rs.250/- fine in default 1 week S.I. 307 - 5 years R.I. 302 - Life	

A-2 341, 324 324(2 counts)- 2 years R.I. each
(2 counts), 341 - Rs.250/- fine
& 302 in default
1 week S.I.
302 - Life

A-3 341, 323 323(3 counts)- 6 months R.I. each
(2 counts), 325 - 5 years R.I.
325 & 302 341 - Rs.250/- fine
r/w 34 in default
1 week S.I.
302 r/w 34 - Life

---

2. The short facts necessary for the disposal of this appeal can be stated thus:

(a) P.W.1 Ravindran, P.W.2 Benetjose, P.W.3 Rajayyan, P.W.4 Tmt. Sailammal, P.W.5 Kochumani and the two deceased Balaiyan and Mahalingam and the accused 1 to 3 were the residents of Ambalamkottavilai Village. P.W.1 and P.W.2 were the children of the deceased Balaiyan and his wife P.W.4. P.Ws.3 and 5 were the brothers of the deceased Balaiyan and the other deceased Mahalingam. One year prior to the date of occurrence namely 15.8.1992, there was a water dispute between P.W.1 and A-1, due to which A-1 was awaiting for an opportunity to attack P. W.1. A month before the occurrence in question, the deceased Balaiyan attempted to lay a fence on one side of his property, which ensued to another quarrel between Balaiyan on the one side and A-1 to A-3 on the other side. On the morning of the date of occurrence, P.W.2 went to a nearby Village for purchase of meat and was actually returning back. At that time A-1 to A-3 assaulted him near Karukkankuzhi. On returning home, P.W.2 informed his father about the same. At about 3 .30 P.M., when Balaiyan was standing in front of his house, he questioned A-1 to A-3 when they were standing in front of their house as to the occurrence that took place in the morning when P.W.2 was assaulted. At that time A-1 uttered the words "we won't leave you". On hearing this, P.Ws.1 to 5 and brother of the deceased Balaiyan namely Mahalingam all came nearby. Immediately A-1 and A-2 dragged Balaiyan towards the eastern part of the house of A-3. A-1 attacked Balaiyan with knife on his left head and neck. Balaiyan could not tolerate the injuries fell down. A-1 uttered the words "don't leave him also". Immediately, A-2 attacked P.W.1 with knife on his left hand. A-3 attacked P.W.1 with a stick on his back and different parts of the body. A-2 attacked Mahalingam with knife indiscriminately. A-1 attacked P.W.2 on different parts of the body. A-3 attacked P.W.2 with a stick. A-3 also attacked P.Ws.3 and 5. A-2 stabbed P.W.4 with knife. P.Ws.1 and 2 immediately took the sticks available there and threw them on the accused. Immediately, after the occurrence was over, the accused fled away from the scene of occurrence.

(b) P.Ws.1 to 5 injured along with the seriously injured Balaiyan and Mahalingam were taken to the Government Hospital, Kulachal, where Balaiyan was declared dead. Except P.Ws.3 and 4, who were given treatment in the Government Hospital, Kulachal, others were taken to the Government Hospital,

Nagercoil. P.W.6 Dr.S.M.Kumar, attached to the Government Hospital, Kulachal treated P.Ws.3 and 4 medically at 3.45 P.M. and 4.55 P.M. respectively and gave Exs.P2 and P4 wound certificates narrating the injuries found on the person. P.W.1 was also treated by the same Doctor, who has given the wound certificate marked as Ex.P3. P.W.6 Doctor sent the death intimation under Ex.P5 along with Ex.P6 intimation as to the injuries found on others to Kulachal Police Station. P.W.16 Michael, Head Constable who was on duty at 6.00 P.M. that day, received the said intimations and informed to the Karungal Police Station, where P.W.18 Kunju Krishnan, Sub Inspector of Police was on duty at that. On receipt of the intimations, P.W.18 went to Kulachal Police Station, got the intimations and then proceeded to the Government Hospital, Nagercoil. He recorded the statement of P.W.1, returned to the Police Station at about 21.30 hours and registered a case in Crime No.338/92 under Ss 302, 307 and 324 against all the accused. Ex.P32 printed F.I.R. was despatched to the Judicial Magistrate, Iraniel.

(c) P.W.7 Tmt.Dr.Thanammai, attached to Nagercoil Government Hospital examined P.W.2 and gave Ex.P8 wound certificate. The Doctor also examined P.W.5 and issued Ex.P7 wound certificate. P.W.13 Dr.Manohar Williams, attached to the very same Hospital, examined A-1, A-2 and A-3 and has issued wound certificates namely Exs.P22, 23 and 24 respectively and opined that all the injuries found on them were simple. P.W.16, the Head Constable on intimation from P.W.13 Doctor proceeded to the hospital and recorded the statement of A-1 under Ex.P30, on the strength of which he registered a case in Crime No.339/92. The printed F.I.R. under Ex.P31 was despatched to the concerned Court. The said Mahalingam, who was undergoing treatment, succumbed to the injuries. The death intimation was given, and the case was also altered to Sec.302 of I.P.C. along with the other provisions. P.W.19 Inspector of Police, who received the copies of the F.I.R. in both the cases in Crime Nos.338/92 and 339/92, took up the investigation and proceeded to the site of occurrence. In the presence of two witnesses, he made an inspection of the site of occurrence and prepared Ex.P11 observation mahazar and Ex.P33 rough sketch. He recovered M.O.10 bloodstained earth and M.O.11 sample earth under Ex.P12 mahazar. He examined the witnesses available there and recorded their statements. He proceeded to the hospital where he conducted the inquest on the dead bodies of Balaiyan and Mahalingam, and the inquest reports are marked as Exs.P34 and 35 respectively. He examined the further witnesses and recorded their statements. He gave two requisitions for conduct of autopsy on the dead bodies of Balaiyan and Mahalingam, which were marked as Exs.P9 and P18.

(d) Accordingly the dead body of Balaiyan was subjected to autopsy by P.W.8 Dr.Rebaikhan. The Doctor found the following injuries.

Injuries:

(1) An oblique incised wound 5 cm x 2 cm x 8 cm (Depth) on the left neck just above the collar bone on dissections, the wound is directed downwards and radially. Blood clots present. Muscles and great vessels (common carotid & Internal jugular vein) injured. It upper 2 thoracic vertebrae injured.

(2) An incised wound 1 cm x 1 cm x 1 = cm (Depth) on the Left side of scalp, close to the midline, extending before backwards on the vertex of scalp. On dissection, heamatoma present over the Right parietal region of scalp. Fracture of Right frontal, parietal, Temporal and occipital bones present. Linear fracture present underneath the incised wound over the Left frontal &

parietal bones. Membranes injured, with the Brain over the fractured site. Stomach 200 ml Rice particles present. All viscera pale.
The Doctor issued Ex.P10 postmortem certificate and opined that the deceased would appear to have died of haemorrhage and shock due to multiple injuries.
(e) P.W.11 Dr.Ramachandran conducted the postmortem on the dead body of Mahalingam and found the following injuries.
Injuries:
1. Incised wound 2" x 1" x bone depth in between the Rt. index finger and the Rt. thumb wound extending from the dorsal aspect to the palmar aspect. Muscles and vessels injured. Bone exposed.
2. Incised wound 1" x 2" x Bone depth above the Rt. eyebrow over the outside of the frontal bone.
3. Cut injury dividing the Rt. external ear at its centre wound extending =" ant. to ext. ear =" post to the Rt. ext. ear wound antero posteriorly placed.
4. Incised wound 1" x <" bone depth on the Lt. Parietal bone wound antero posteriorly placed.
5. Incised wound 3" x 1" x bone depth over the posterior aspect Rt. Parietal bone.
6. Incised wound =" x <" x bone depth above and posterior to the Rt. external ear.
7. Ecchy mosis over the Rt. upper and canan lid.
Deep Dissection:
Opening of the scalp haematoma (blood clot) over the Rt. half of the skull present. Stellate fracture of Rt. parietal bone corresponding to the injury No.5. On removing the pieces of bone 30 ml. of blood clot present in the epidural region. Injury to the duramatter and brain present over the post part of the Rt. side of the brain.
The Doctor issued Ex.P19 postmortem certificate and opined that the deceased would appear to have died of shock and haemorrhage due to injuries sustained.
(f) The further investigation was taken up by P.W.20 Selvarajan, Inspector of Police. He arrested A-2 and A-3, when they gave confessional statements voluntarily. The said statements were recorded in the presence of P.W.10 Amirtham and other witness. The admissible portion of the confessional statements are marked as Exs.P14 and P15 respectively. Pursuant to the confession, A-2 produced M.O.1 knife, and A-3 produced M.O.2 knife which were recovered under Exs.P16 and P17 respectively. A-1 surrendered before the Judicial Magistrate No.I, Nagercoil. On a requisition made by the Investigating Officer, all the material objects recovered at the time of investigation were sent for chemical analysis, and the reports of the Chemical Analyst and the Serologist were marked as Exs.P27 and P28 respectively. The Investigating Officer who further proceeded with the investigation in Crime No.339/92 which came into existence at the instance of A-1, referred the same as one mistake of fact, and a refer notice was also served on A-1, which is marked as Ex.P36. On completion of the investigation in this case, a final report was laid against the accused under Ss 302, 307, 324 and 326 of I.P.C.
3. In order to prove the charges levelled against the appellants/ accused, the prosecution examined 20 witnesses and marked 37 exhibits and 12 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution

witnesses, which they flatly denied as false. No defence witness was examined. But, they add that at the time of occurrence, the prosecution witnesses were the aggressors, and they came armed with deadly weapons like aruval, and it was the prosecution witnesses and the two deceased who attacked them, and they sustained injuries, and they had treatment, and they have also given complaint, and thus, the case of the prosecution was false. On consideration of the rival submissions and scrutiny of the materials, the trial Court found all the three accused guilty and sentenced them to imprisonment as referred to above. Aggrieved appellants/accused have brought forth this appeal.

4. The learned Senior Counsel Mr.V.Gopinath, arguing for the appellants, would submit that all these injured are closely related to the deceased; that they have all along been in inimical terms with the accused; that from the evidence, it would be clear that it was the prosecution witnesses and those two deceased who went to the house of the accused and attacked them; that the place of occurrence was in front of the house of A-1, which would clearly indicate that the prosecution witnesses and the two deceased have gone over there, and the same was the reason for the origin of the crime; that the prosecution in no way has explained the injuries, which included the incised wounds in the scalp of the accused persons; that there is no reference as to the attack on the accused in the F.I.R., and it has not been satisfactorily brought forth in the Sec.161 Cr.P.C. statements also; that the first complaint given was by A-1, and a case came to be registered also; that the police agency has proceeded have not made proper investigation of the case in Crime No.339/92, which came into existence at the instance of A-1; that the nature of the injuries that have been caused on A-1 to A-3 would clearly indicate that the prosecution witnesses and the other two deceased were armed with deadly weapons and caused the injuries to them; that in the instant case, the prosecution has not brought forth the genesis of the occurrence, which cast a great doubt on the prosecution case and veracity of the witnesses; that once the prosecution has suppressed how the injuries were caused to the accused and in view of the non-explanation of the injuries on the accused and the fact that the genesis was not brought to the notice of the Court clearly, the Court could not make any decision over the case, and the lower Court without proper appreciation of evidence, has found all the appellants/accused guilty. Added further the learned Senior Counsel that the lower Court has also not taken into consideration that the case in crime No.339/92 has not been properly investigated, though it was brought to the notice of the trial Court, and hence, the benefit of doubt should be given to the accused, and they are entitled for acquittal in the hands of this Court.

5. Opposing strongly the above contentions of the appellants' side, the learned Additional Public Prosecutor Mr.S.Jayakumar would submit that the lower Court only on proper appreciation of the evidence has found them guilty; that it was a case where s.1 to 5, who were all injured, have been examined; that they have given a graphic narration of the entire incident; that it was a crime in which one Balaiyan and one Mahalingam both were subjected to death by the brutal attack made by the accused; that from the evidence, it would be clear that the occurrence has taken place, though in front of the house of the accused, it was the accused, who dragged the said Balaiyan from his house to the eastern side of A-3's house, and in that place, the occurrence has taken

place; that the contention of the appellants' side that the injuries on the accused were not explained by the prosecution has got to be rejected for the simple reason that all those injuries found according to the wound certificates marked as Exs.P22 to P24 were simple injuries, and hence, the non-explanation, even assuming that the accused sustained injuries at the time of occurrence, will not in any way affect the prosecution case; that similarly the contention of the appellants' side that the genesis of the occurrence has not been brought forth has got to be rejected, and hence, the judgment of the lower Court has got to be confirmed.

6. This Court paid its full attention on the rival submissions made and made a thorough appraisement of the available materials.

7. The gist of the prosecution case as could be seen was that due to the prior enmity on the date of occurrence namely 15.8.1992, the accused 1 to 3 criminally trespassed into the house of Balaiyan, the father of P.W.1 and dragged him from there to the eastern part of A-3's house, and on the command of A-1, all of them attacked Balaiyan, and while the deceased Mahalingam and P.Ws.1 to 5 on hearing the hue and cry came to the rescue of Balaiyan, they wer e also attacked indiscriminately, and it resulted in the death of Balaiyan and Mahalingam, while they were under treatment, and P.Ws.1 to 5 were injured. The fact that both Balaiyan and Mahalingam met their death on account of homicidal violence is not disputed. It is also true that P.Ws.1 to 5 were treated by the Doctors both at Government Hospital, Kulachal and Government Hospital, Nagercoil, and the wound certificates were issued by the Doctors under Exs.P2 to P4, P7 and P8 respectively, wherein the injuries sustained by them have also been narrated. This fact could not disputed in view of the medical evidence brought forth by the prosecution. But, the Court has to necessarily agree with both the contentions put forth by the appellants' side that in the instant case, the genesis and origin of the occurrence have not been placed before the Court to know how the crime in question commenced; and that the prosecution has not explained the injuries found on the accused.

8. According to the said prosecution witnesses, on the morning of the date of occurrence, P.W.2 went to the nearby village for purchase of meat and was coming back, and it was A-1 and A-2 who assaulted him on his way back near Karukkankuzhi, and the same was informed by him to his father Balaiyan, and thereafter, it was Balaiyan, who questioned the accused as to how they assaulted his son that morning. Therefore, from the evidence of P.Ws.1 to 5, it would be clear that it was Balaiyan, who questioned the assault made by the accused on that morning. At this juncture, it is pertinent to point out that according to the prosecution, it was A-1 to A-3 who trespassed into the house of Balaiyan and dragged him to the eastern part of the house of A-3, and thereafter, the incident has taken place. Now, had it been the intention of the accused, on hearing the words of Balaiyan, to attack him, there was no necessity for the accused to assemble and trespass into the house of Balaiyan and to drag him to the house of A-3 and then assault. It remains to be stated that the injuries found on the accused and as narrated in the wound certificates under Exs.P22 to P24 could not have been caused by the stick. The prosecution is unable to explain how those injuries were caused to the accused and how the occurrence has taken place in front of the house of A-3. But, the prosecution comes forward with a story that the accused dragged the said Balaiyan from his house to the house of A-3. This would clearly be indicative of the fact that both the deceased and the injured P.Ws.1 to 5 were

armed with weapons, and they having wanted to question the conduct of the accused by making the assaul t that morning, went into the compound of the accused and questioned the same, and in that process, the occurrence should have continued.

9. It is true that in the wound certificates under Exs.P22 to P24, the Doctors have opined that the injuries are simple. Exs.P23 and P24 are pertaining to the injuries found on A-2 and A-3. A perusal of Exs.P23 and P24 would go to show that incised wound was found on the scalp of both A-2 and A-3, and thus, at no stretch of imagination, the case of the prosecution that the prosecution witnesses took the sticks therein and attacked the accused, and those injuries were caused can be accepted. It has got to be pointed out that even in the First Information Report, nothing has been stated about the injuries sustained by the accused. It remains to be stated that no one of the prosecution witnesses namely P.Ws.1 to 5, though according to the prosecution, they were injured at the time of occurrence, have whispered anything about the injuries sustained by the accused. On the contrary, they have stated that they did not know how those injuries were sustained by the accused. Therefore, this would be nothing but suppression of the entire facts of the case.

10. It has also got to be pointed out that A-1 immediately after the occurrence, has gone to the hospital and was examined by the same Doctor, and he has also stated to the Doctor how he sustained injuries. On intimation given by the Medical Officer, the Sub Inspector has gone over to the hospital and recorded the statement of A-1, and a case in Crime No.339/92 came to be registered. A perusal of the statement of A-1 and the F.I.R. in Crime No.339/92 marked as Exs.P30 and P31 respectively would clearly reveal that A-1 has narrated the occurrence that took place. At the time of questioning under Sec.313 Cr.P.C. also, they came out with a plea that it was the prosecution witnesses and the deceased entered into their house armed with deadly weapons and attacked them. The case came to be registered pursuant to the first statement given by A-1 under Ex.P30, in Crime No.339/92. The averments found in Ex.P30, the evidence available, the fact that the genesis of the occurrence has not been brought to the notice of the Court and the non-explanation of the injuries found on the accused, all would clearly indicate that the plea of the accused is more probable than that of the prosecution witnesses. The failure on the part of the prosecution to bring to the notice of the Court the genesis of the occurrence and the suppression of the true facts as to how A-1 to A-3 sustained injuries during the course of the same transaction would be fatal to the prosecution case itself. The Court is of the opinion that in view of these grave infirmities in the prosecution case, the contentions of the State do not merit acceptance.

11. The learned Additional Public Prosecutor brought to the notice of the Court that the injuries on the accused are all simple, and hence, the prosecution is not duty bound to bring forth any explanation. This Court cannot agree with this contention. It is true that the injuries suffered by the accused, as per the opinion of the Doctors were simple. It is also true that if the injuries are superficial and simple in nature, the same need not be explained. Only on that ground, the Court is not rejecting the case of the prosecution. In the instant case, when the prosecution has not brought to the notice of the Court the genesis of the occurrence, the Court is unable to agree with or appreciate the contentions of the State.

12. In A.I.R. 1976 SUPREME COURT 2263 (LAKSHMI SINGH AND OTHERS V. STATE OF BIHAR), the Apex Court has held thus:

"In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; and

(3) that in case there is a defence version which explains the injuries on the persons of the accused, it is rendered probable so as to throw doubt on the prosecution case."

The Court is of the considered view that the decision of the Apex Court cited supra squarely applies to the present facts of the case. In view of the doubts cast on the prosecution case, it cannot be held that the prosecution has proved the case beyond all reasonable doubts. Hence, the judgment of the lower Court has got to be necessarily set aside, and the appellants/A-1 to A-3 are entitled for acquittal of the charges levelled against them.

13. In the result, this criminal appeal is allowed, setting aside the judgment of the lower Court. The appellants/A-1 to A-3 are acquitted of the charges against them. The bail bonds, if any executed by them, shall stand cancelled.

Index: Yes
Internet: Yes

To:

1) The Sessions Judge, Kanyakumari at Nagercoil.
2) The Judicial Magistrate, Eranial.
3) The Judicial Magistrate, Eranial,
Thro' The Chief Judicial Magistrate, Kanyakumari
District at Nagercoil.
4) The District Collector, Kanyakumari District.
5) The D.G.P., Chennai.

6) The Public Prosecutor, High Court, Madras.
7) The Superintendent, Central Prison, Palayamkottai.
8) The Inspector of Police, Karungal Police Station.

nsv/

□